

# **MEETING MINUTES – Meeting # 3**

## **Biosolids Rule Revision Advisory Group (BRRAG)**

### **September 15, 2006**

**ATTENDING:** David Bosch, Michael Coster, Kathleen Deason, Kyle Dorsey, Shelly Eisenbarth, Mark Fuchs, Dick Hetherington, Roger Hickey, Arlie Huffman, Roberta King, Jim Leir, Doug Miller, Kathi Scanlan, Larry Short, Daniel C. Thompson, Daniel K. Thompson, Kelly Wynn; **ABSENT:** Tony Barrett, Mike Chapman

#### **WELCOMING REMARKS**

- Daniel K. Thompson (Daniel K.) introduced Mark Fuchs (Mark) as a guest from Ecology's Eastern Regional Office. Daniel K. proposed that Mark be allowed to contribute comments on the issues being discussed throughout the meeting rather than waiting until the end of the meeting. The BRRAG agreed to the proposal.

#### **POWERPOINT PRESENTATION ON FEES, “WHERE WE ARE, WHERE WE NEED TO BE, AND POTENTIAL OPTIONS FOR GETTING THERE”**

- Daniel K. explained that comments and questions received during the presentation would not be recorded in the meeting minutes. After the presentation concluded, Daniel K. said there would be an opportunity for comment on the fee options, which would be recorded in the meeting minutes.



BRRAG Meeting  
#3--Presentation on I

#### **DISCUSSION OF FEE OPTIONS**

- Kyle Dorsey (Kyle) offered perspective on the last biosolids rule revision process when he worked at Ecology.
  - Back in the last rule revision, I worked with all stakeholders, including Ecology-WQ, etc. and came up with an FTE estimate of 12-15 for the biosolids program that was the level of resource commitment which in my view appeared to satisfy what I thought the regulated community, local health departments, EPA, and the agency wanted if they could have it. I was told by a major stakeholder (in a kind way), that I would not be getting a million dollars a year. And of course I knew that was not a reasonable expectation.
  - I recognized that such an amount would not be feasible, so I ratcheted down to 4 FTEs at the regions and 3 at HQ for a total of 7.
  - We went out to the regulated community and they wouldn't support 7 FTEs.
  - Ecology then landed on ~3.5 FTEs as an absolute minimum to sustain a “core-level” program. I was emphatic that that level of resource commitment would not provide the kind of response stakeholders apparently wanted. It was clearly understood that local health departments would have to play a significant role through delegation and the regulated community would have to muster significant technical assistance from other sources.

- Things that have now changed: (104B) grant dollars for seed money has gone away; and historically, we never got money from the WQ program.
- The presumption was always that the agency would match resources to the revenue, but the reality was the agency consistently provided more resources than were paid for.
- In negotiating total FTEs for the biosolids program, I told stakeholders if they want a core level program, then the service will match that; meaning, the less people, the longer response times.
- As a side note: internally the agency would not support a fee for service.
- Kyle added that it costs more than approximately \$50 to write a check, so that's another reason why the smaller facilities are paying nothing right now.
- Shelly Eisenbarth (Shelly) said she thinks there should be a minimum fee for septage management, beyond \$50.
- Larry Short (Larry) relayed that test hole inspection fees are charged on a per visit basis, and asked if there is any way if I call Ecology then there would be a fee associated with that: a consultant approach. Larry said he wouldn't mind paying an hourly fee.
- Daniel K. responded that there is no option as per RCW, due to the "RE" requirement.
- Kelly Wynn (Kelly) asked, can you have a base fee and then have an RE fee? Daniel K. said that we could take that approach, but even the base fee would have to be based on an RE. Kelly then asked, could charge the base fee for the first RE then subsequent fees are differential fees (lower the cost over other FTEs), which are more in line with what you would provide service for the facility? Daniel K. responded: yes, it is possible. Kelly said it's not equitable right now; the little facilities should pay. Kelly again suggested the fee structure of: base fee (more for first RE's) + other fee based on # customers (at a lower rate for later RE's).
- Daniel C. Thompson (Daniel C.) asked which proportion of the 10,000 gets charged out at a higher percent? You either hold RE's constant or a fee for RE's.
- Kyle responded we back into the \$600K.
- Dick Hetherington (Dick) said with a minimum fee it will feel like they are paying their share, but mathematically they may not be paying their costs.
- Kelly said let's assume \$1650/facility is needed. You could charge \$500 for the 1<sup>st</sup> RE, then the remaining \$1150 that you need becomes a higher RCE fee that you can spread out between all the other facilities.
- Kyle suggested \$500 per RE for the first RE, then another scale for additional REs. (This was provided as an example; fees could be more for the first RE or a larger first unit of REs could be used.) Kyle said that there is a minimum threshold for a base fee; for example, handling a simple treatment plant: what does it cost to track that information, provide technical assistance, and drive out there? There is a cost for keeping a facility in the system.
- Dick asked whether the state had a centralized database. Daniel K. responded that the annual reports are in a database, but the permits are not in the database.
- Dick noted there is a cost for annual reports, processing annual reports and for a statewide database, and that should be thought about.
- Shelly said we should figure out the average cost/facility as suggested by Kyle, but it may be higher than septage facilities will want to pay.

- Kyle said the agency did a 2002 septage management study. Marv Vialle and Kyle (both from Ecology) came up with a fee structure and ran it by the Environmental Health Directors (including BRRAG member, Tony Barrett). An initial idea that appeared to have consensus was ultimately rejected and led to an alternative: charge a fee wherever septage meets its final disposal (\$.005 or \$0.01). Kyle said there is a way to tie it to RE's, and in fairness to larger facilities we may have to level it off.
- Daniel K. said that if he remembers correctly (he said he hasn't read it in a while) collecting the estimated costs for a full septage program as recommended by the septage management study would increase the charge per homeowner having their tank pumped in a given year by less than \$10—or less than 1 cent/gallon.
- Roberta King (Roberta) said it might cause trouble in the wastewater treatment realm and asked if there is some way that we can follow the money to make sure it gets where it needs to go.
- Larry said \$1,650 per facility isn't a good idea. If you get nickel and dimes, pretty soon people are going to pump it over the hill if the customer gets charged too much. The worry is that it would be too expensive; he knows his customer base and knows that people will dump it.
- Kyle said that increasing \$10/\$15 per year wouldn't be that bad.
- Doug Miller (Doug) said he didn't want to speak for the board, but we have 5 facilities and they would all be under that \$1650 permit/fee then you could charge us on the RE. For example, one base charge is a win for us and then you guys (Ecology) get your RE by each town. Perhaps there could be a reduction on the RE part of it (instead of being \$.21 it could be \$.04).
- Roberta relayed that King County serves ~665,000 RE's and suggested if you receive a certain amount of septage then you pay a flat fee.
- Shelly said that if there is no minimum fee, some septage pumpers will say that they handle the minimum which keeps them from being billed.
- Doug asked why don't you charge a person who owns a septic tank (as per tax bill every year)? Daniel K. stated that that was one of the suggestions that came out of the septage advisory group and it was the one that he supported. However, the suggestion was generally not supported.
- Kyle responded that the primary problem with this approach was that Ecology can only issue a fee to those who receive a permit, and no septic tanks require a biosolids permit.
- Arlie asked Daniel K.: Are you telling me that you can only charge on an RE? Daniel K. responded yes, and said if we (Ecology) figure out what a base fee is, then we can easily do that.
- Arlie also asked several other questions, including: Is a small facility being charged the same as a large facility? Aren't RE's the same for large and for small? Furthermore, can we charge a permit processing fee? Can we differentiate RE costs?
- Daniel K. responded to Arlie's questions with: a small facility is not being charged the same as a large facility because the REs are different, however, the rate per RE is the same; a permit processing fee is not allowed under the current law, because that's not an RE-based charge; we could differentiate RE costs by say, charging more per RE for a smaller facility, but that might make things more confusing than necessary; the fees for smaller and larger facilities will almost certainly have to be somewhat different if we hope to achieve some level of fairness.

- Arlie said that's the reason for going back and looking at what the average Ecology cost of servicing a small/average facility.
- Mark asked what the WQ program does. Kelly responded they charge per RE.
- Kelly suggested a base fee that gets the funding for a core-level program (~\$250K) and then get the additional (\$400K). It all goes back to how much do you/Ecology generally spend for any given facility, e.g., on average, time/cost.
- Roger said that he suspects that there are 100M gallons septage in WA. In order to collect an additional \$100K from septage, on a typical septic tank that would add ~\$1.11 charge to homeowners having their 1,000 gallons tank pumped. At 1,250 gallons/tanks, that's about \$1.39/tank, and that seems like a pretty minimal impact. When you spread it over all gallons it isn't very much. Roger recommended Ecology focus on how much septage is processed then charge a fee at the endpoint.
- Kyle said you would have to assume that the endpoint is a permitted facility— anything that goes outside of a permitted facility will not be accounted for. Kyle said he thought we/Ecology had previously estimated 75M gallons for the state, but that considered a conservative estimate, so 100M gallons could be a better estimate.
- Michael Coster (Michael) suggested that we'd have to add on an administration fee. There's at least 40 pumpers for us and keeping track of it would be hard.
- Daniel K. said we (Ecology) don't track how much goes to the WWTP's. We don't permit pumpers who go to WWTP's.
- Larry said that I would have to keep track of it. If I take all my septage to a WWTP then you don't have to track it for Ecology?
- Kyle added that you do have to track it for the local health departments and WWTP's.
- Kelly said in LaConnor we do 6M of septage. If there was a fee then we would raise the fee to the haulers and collect it over time. It's not complicated; the fee increase will be approved to the city then the cost will be passed on to the haulers and the haulers will be passed on to the homeowners. The argument is that we need to base it on the costs, not whether or not they are happy with it.
- Michael said that we have a capacity difficulty; we encourage communities to develop their own septage operations. We charge more for septage.
- Kyle said there are septage haulers who would not be truthful, but most will find a way to spread the fee and pay it.
- Roger asked if local health departments require that the pumper say where the load will go? Kyle said yes – at least some.
- Shelly said there's a problem with haulers who don't know what they are doing and are "cowboy'ing it" and not doing it right.

#### **CONTINUED – DISCUSSION OF FEE OPTIONS**

- Dick said Kyle mentioned the 106J money (WQ money for NPDES, etc.) Dick relayed that a block of money is given to WQ-Ecology, including \$4.0 million for surface water and \$0.5 million for groundwater. In EPA's mind, biosolids is included with the 106J and is an eligible cost and WQ may share that portion with SWFAP/Biosolids.
- Kyle suggested they're (WQ-Ecology) not going to share with SWFAP's biosolids program--we tried that years back and SWFAP management and WQ management didn't act on sharing the 106J money.

- Dick wanted to bring up the issue of primacy/delegation and draw Ecology's attention to different activities that SWFAP will commit to; he asked: Perhaps Ecology should think about for the fee in relation to this?
- Daniel K. responded that SWFAP management decided several years ago that we were not going to seek full delegation. The likelihood isn't really great right now for full delegation, but at least we could work a piece such as the septage issue.
- Dick asked if the attorney has reviewed the fee examples. Daniel K. responded that when we settle on fees we will run it by the AAG.
- Kyle asked Mark what percentage of permit applications were complete and a good effort (excluding Spokane)?
- Mark answered that very few are good applications—the good ones are the operational/management program biosolids facilities with ongoing operations.
- Mark agreed that receiving good applications is an issue and that we should think about developing a program that will further biosolids or sustain FTEs.
- Kyle posed the same question to Daniel K. in terms of how many applications received by Ecology were "good" applications.
- Daniel K. responded that at best 25% are decent applications, and even those have some issues that need to be corrected. However, Daniel has noticed some improvement in the quality of applications since the new permit was issued.
- Kyle said that Ecology is doing work that it shouldn't have to do, and provided an example: An application that was not much better than one written in crayon on a paper bag was accepted by Ecology, and Ecology then spent countless hours helping the submitter correct it. Instead, Kyle suggested that Ecology turn back some applications that are bad.
- Kelly said that if he goes to a local planning department they don't help fill out the application.
- Kelly asked: How much time does it take to review an application?
- Mark responded that it can be anywhere from a day to a week.
- Roger asked do you have to return it after the first deficiency or do you review it all for deficiencies?
- Mark said that he reviews it all.
- Kelly's said that this is what he's trying to get at with the base fee + RE fee and added, as a tax payer, I don't think that I should have to pay for Ecology helping facilities fill out (or their consultants fill out) applications.
- Kyle added that they (applications) are all so varied.
- Daniel K. said Ecology always has to be present and respond to questions. Furthermore, when those applications are deficient Ecology has to respond in a manner to cover all the deficiencies. Ecology cannot simply say, "This is not good enough...". Providing technical assistance is mandatory.
- Arlie suggested Ecology should continue to provide a user-friendly service and not cut back consultations.
- Kyle said when you look at the whole program the regulated community is not getting user-friendly level at 6 FTEs. To get to the user-friendly level Ecology needs approximately 12 FTEs for that. Kyle added that Ecology is simply not getting good enough applications.

- Roberta relayed: I'm in between Kyle and Arlie. If you go to a consultant because you don't know how to fill out a permit, that bothers me. We (King County) are paying for a large portion of the permit fees and we are investing in a program. It should be straightforward enough, like Arlie said, that a facility representative should be able to fill out a permit on their own with Ecology's assistance.
- Arlie said we/Natural Selection Farms Inc. check with the agency before we do something, and if it (the application) was a little more simple that would make things easier for everyone; we would still go ahead and ask about any regulatory issues though. Arlie said he wants the ability to call the agency with questions.
- Mark responded and said the diversity of ways of handling wastewater and biosolids contributes to the complexity of the application packages.
- Roger agrees Ecology should reduce its technical assistance, but also said I want a strong regulatory program. It is a very complicated and dynamic system and NW Biosolids Management Association, etc. have a list of consultants to help. Roger asked: If a small treatment plant goes and hires a poor performing consultant, should we subsidize that? However, there should be a staff at Ecology to answer regulatory interpretations.
- Daniel K. relayed that Ecology is required by statute to provide technical assistance, including regulatory assistance. Daniel K. said that I hear a suggestion that we look at reducing the FTEs committed to providing assistance and to encourage outside consultants.
- Kyle said that you (Ecology) need to be more focused on the general implementation work—i.e. general permit work, biosolids research like the chemicals in the portable toilets. Is it fair or right to get a free ride when you catch Ecology regional staff to help?
- Mark said there are complexities with sending back deficient applications without a thorough response; Ecology can be perceived as being belligerent. It's the site specific information that takes time.
- Dick said you're not out there doing workshops. We've talked about that.
- Mark said when Kyle was in the program we would do a number of these and focus on sections, but the guys filling out the applications generally are from a different area.
- Daniel C. said, as a side note, there is a disincentive here, if operators are hearing that then they are hearing that this has nothing to do with their jobs.
- Daniel K. said I've done maybe 10 "workshops" over the past few years, but often the people attending were there for the CEUs and were not necessarily the ones who would be filling out the applications. Responses from attendees varied widely: some responded that they obtained lots of information, others responded that the information was not helpful to them.
- Kelly (returning to the fee issue) said that I would vote for the 5 groups of fee payers based on RE with a revision that fills the entire ~\$200K gap.
- Daniel K. stated that the ~\$200K gap is based on the current ~6 FTEs committed to the program and asked the BRRAG, does everyone agree that Ecology should maintain the current FTE level?
- Daniel C. said before I answer, I'd like a clear definition of what work Ecology does.
- Daniel K. said that he'll look into the core level of service and then draft a fee approach based on a core level of service in addition to one that breaks facilities into several RE ranges (probably 5). He asked: does anyone oppose a program that takes this approach?

- Kyle asked, would septage be handled differently? Daniel K. said the first draft would not handle septage differently. But if that didn't work, Ecology could develop a separate approach for septage that would likely be similar to the approach discussed earlier where a charge would be assessed at the endpoint (be it at a WWTP, a land application site, etc.).
- Kyle added he would reserve support until he sees how septage would be handled. Another thing to think about would be BARTS (Ecology's billing program). Daniel K. stated that he hadn't considered BARTS, but that's a good suggestion because the current program only assesses fees based on a single charge per RE, not varying charges based on ranges of REs.
- Kelly added that incinerators should be charged the same fee and that Ecology should not be encouraging incineration.
- Dick said that he would like to see incineration covered in a general permit. The 503 elements are not being covered by the local air pollution control regulations.
- Daniel K. said that he has assumed the 503 requirements are being addressed in state or local air permits. Ecology's biosolids program is not inclined to start addressing the act of incineration. Rather the biosolids program has and will continue to address solids handling until it reaches an incinerator. Daniel K. also stated that he agrees with the concept that incineration facilities should be paying a base fee as well, however as a rule incineration facilities do not require a lot of Ecology biosolids staff time.
- Roberta added, maybe don't count on them.
- Daniel K. said the plan is to create several general permits in the future.
- Dick added: another place you're spending money is excessive exuberance opposing landfilling.
- Daniel K. said that Ecology is required to encourage beneficial use by statute, and landfilling is not beneficial use. However, Dick's point is well taken at least for some of the smaller facilities.
- Daniel K. said he will try to figure out a base level charge to address an average facility, that considers the entire administration of a permit (see statute definition) and develop a 5 tier structure and not separate-out septage facilities from the approach. If that doesn't work then we can look into spreading the cost across the 100M gallons for septage.
- Kelly said that the county may be a problem when considering the credit option.
- Doug suggested a credit option that you don't have to chase the dollar across the state; the WWTP doesn't have to accept it and if they do they get a credit.
- Kyle asked, do I get a credit?
- Dick said the rates for normal sewer is a couple dollars a month.
- Larry said that we/smaller guys are going to be the only ones who will complain and I'm okay with slide 14 with a \$750/5 Tier Option. A flat fee for the little guys is going to be the way to go.
- Dick said that small business support is a major driving force in government regulation and I think the state is the same way.
- Mark wanted to bring up in-state transport: There are lots of big facilities that are looking at WA to bring in biosolids. If we drop our RE structure, that's going to be more an incentive to deal with more biosolids.

- Roberta asked what we are going to do with the fee structure for out of state producers (importers)?
- Daniel K. responded that the current draft language which was sent to the BRRAG yesterday says an out-of-state facility can export bulk biosolids or sewage sludge into WA in 2 ways: 1) If they want to manage their own operation, they'll need to go through the entire permitting process and pay a commensurate fee; or 2) if they send it to an in-state facility permitted to manage it, the regulatory burden would be placed on the receiving facility, and a fee would be charged to the receiving facility based only on the amount received. In either of those cases, local health departments or EPA could object to an Ecology approval.
- Roberta asked would you still base the fee on the tons/amount bringing into Washington if they want their own permit? Daniel K. said that the current draft says that such a facility would pay a "full" fee based on REs because Ecology would have to process the permit and implement the full program; whereas if they take it to a place already with a permit Ecology doesn't have to do that implement a new permit.
- Daniel K. encouraged all to read the proposed draft; the idea was to make the permit/importer issue as easy as possible while being fair to in-state facilities who have to pay full fees based on all REs regardless of what they do with their material.
- Daniel C. said it seems like in the charge per amount shipped in is double-charging. Is the idea is that a tonnage fee would be small? The permit should reflect the cost of service. If they have their own permit there's a certain base cost + tonnage fee to monitor it; we need full cost recovery.
- Daniel K. said the idea is to encourage out of state facilities bringing solids into the state to an already permitted facilities. It also says the producer has to meet biosolids/sewage sludge standards in WA as well as their home jurisdiction. This was to preclude out-of-state jurisdictions trying to send biosolids into WA in order to avoid meeting stricter standards in their home jurisdiction.
- Kyle asked, isn't the presumption that the administration has been done in the other state already? Daniel K. said that's not a presumption. For example, Ecology cannot know whether or not the ID DEQ has fully reviewed the compliance for an ID facility wishing to export solids to WA. Furthermore, ID only has a partial FTE committed to biosolids issues. Even in Oregon, where a thorough biosolids program is in place, Ecology cannot be certain about the amount of scrutiny given to any particular facility. Daniel K. also noted that the Oregon program does not allow importing; they will not accept WA biosolids into Oregon.
- Kyle said that the fee structure has been prohibitive for exporters; under the current approach, it costs too much to send biosolids into Washington.
- Mark suggested Ecology think about the in-state tiered structure and the out of state structure. He asked, are you going to test that?

## **REVIEW OF SIGNIFICANT CHANGES BEING PROPOSED AND THE BRRAG'S ROLE IN REVIEWING THE PROPOSALS**

- Daniel K. discussed details in the email he sent out September 14, 2006, to the BRRAG, including draft proposed significant changes to the rule. The proposal is for the BRRAG to review and comment on the draft changes within 2 weeks (by September 29<sup>th</sup>).



- Kyle said he didn't see a problem with review time but wants to know how Ecology will respond to comments.
- Daniel K. stated that Ecology would provide written responses to comments received on draft revisions. During the previous BRRAG meetings the group has discussed numerous issues; Ecology took comments made during these discussions into consideration when writing the current draft revisions. The comments made have been captured in the meeting minutes.
- Daniel K. asked the BRRAG to please comment on draft changes; the group's comments are very important. (Kathi added that in addition to comments, recommendations of alternative draft language would be appreciated.) Daniel said he will send out a revised draft based on comments by next meeting, including a reasoning of what recommendations were and were not incorporated and why.

### **SUMMARY OF MEETING # 3 AND NEXT STEPS**

- Daniel K. stated that he would use comments received during this meeting to develop a draft revised fee section.
- Daniel K. stated that the next scheduled meeting was supposed to continue addressing fees, but instead he proposed that the next meeting discuss all proposed changes, including fees.
- It was decided that the next (and possibly final) meeting of the BRRAG would be on Friday, October 13. The group will talk about the draft rule language, including all significant changes. Daniel K. will provide a draft revised rule before the next meeting.